SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC - 4 2015
ARTHUR JOHNSTON
BY ________ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTH JACKSON DIVISION

CHRIS LEWIS;
TAYRL HOSKIN;
CHARLES AYERS; AND
ALL OTHER SIMILARLY SITUATED
EMPLOYEES AND PERSONS

VS. CIVIL ACTION NO. 3:15-cv-876 CWR-FKB

CITY OF JACKSON, MISSISSIPPI;
TONY YARBER, IN HIS OFFICIAL
CAPACITY AS THE MAYOR OF THE
CITY OF JACKSON, MISSISSIPPI;
GUS MCCOY, IN HIS OFFICIAL
CAPACITY AS THE CHIEF ADMINISTRATIVE
OFFICER OF THE CITY OF JACKSON, MISSISSIPPI
AND DENISE MCKAY, IN HER OFFICIAL CAPACITY
AS THE DIRECTOR OF THE DEPARTMENT OF
PERSONNEL MANAGEMENT OF THE
CITY OF JACKSON, MISSISSIPPI DEFENDANTS

COMPLAINT
(JURY TRIAL REQUESTED)

INTRODUCTION

This civil action is brought pursuant to Fair Labor Standards Act ("FLSA") which permits an employee to bring suit for violations of the FLSA against an employer for and in behalf of himself and other employees similarly situated. The Plaintiffs named herein have been deprived of overtime-rate compensation for the entirety of their employment with the City of Jackson, Mississippi ("City") in violation of the FLSA. As set forth below, the named Plaintiffs and others similarly situated have been unlawfully compensated for overtime work by the City with the City only paying the Plaintiffs' regular non-overtime wages for overtime hours worked. The City has further violated the FLSA by failing to pay separated employees accrued wages owed to them. The City has additionally violated the FLSA by not keeping adequate employment records and time logs. As a result of these violations of the FLSA, the Plaintiffs named herein desire to join in a collective action against the City with other employees similarly situated to recover overtime wages and accrued wages owed to them together with actual, special and punitive damages.

COME NOW, the Plaintiffs, Chris Lewis, Taryl Hoskin and Charles Ayers, for and in behalf of themselves and other employees similarly situated, and file this COLLECTIVE ACTION against Defendants, City of Jackson, Mississippi, Tony Yarber in his official capacity as the duly elected Mayor of the City Of Jackson, Mississippi, Gus McCoy, in his official capacity as the Chief Administrative Officer of the City of Jackson, Mississippi, and Denise McKay in her official capacity as the Director Of Personnel Management of the City of Jackson, Mississippi and in support thereof, Plaintiffs would show unto the Court the following, to wit:

JURISDICTION AND VENUE

1. This Court is vested with jurisdiction and venue is proper pursuant to the Fair Labor Standards Act, 29 U.S.C. §216, and the Federal Rules Of Civil Procedure.

COLLECTIVE ACTION

2. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216, the above named Plaintiffs bring this civil action as a collective action for and in behalf of themselves and employees similarly situated and presently employed by the City Of Jackson, Mississippi and/or previously employed with the City Of Jackson, Mississippi who have sustained damages as a result of the City's violations of the Fair Labor Standards Act.

CLASS CERTIFICATION AND COURT SUPERVISED NOTICE

3. Plaintiffs allege that they are members of a putative class who are the victims of a single decision, common policy and plan carried out by the exact same Defendants in violation of the Fair Labor Standards Act. Sufficient evidence is presently before this Court that there exists a putative class with common claims against Defendants of the same identity with said claims arising from nearly identical facts. Therefore, this Court is vested with the authority to certify Plaintiffs as a conditional class and order that court-supervised notice of this action be given potential class members. As such, Plaintiffs request that this Court certify them as a conditional class and order that notice of this collective action be given to potential class members. Plaintiffs request that the Lusardi Method be immediately ordered so potential class members may come forward and opt in this collective action pursuant to the Fair Labor And Standards Act. Timely certification of a conditional class along with court supervised notice of this action to potential class members will promote judicial economy, prevent duplicative actions and deter issues of res judicata and deprivation of due process. See *Harris v. Hinds County, Miss.,* 2014 WL 457913 (S.D. Miss. 2014) *Lusardi v. Xerox Corp.,* 118 F.R.D 351 (D.N.J. 1987) *Hoffman-La Roche Inc., v. Sperling,* 493 U.S. 165 (1989) *Kaluom v. Stolt Offshore, Inc.,* 474 F.Supp.2d 866, 871 (S.D.Tex.2007).

NAMED PARTIES AND OTHERS SIMILARLY SITUATED

4. Plaintiff, Chris Lewis, is an African-American male resident of Hinds County, Mississippi, residing at 162 South Prentiss Street, Jackson, Mississippi, 39203.

5. Plaintiff, Charles Ayers, is an African-American male resident of Simpson County, Mississippi, residing at 113 John Ayers Road, Mendenhall, Mississippi, 39114.

6. Plaintiff, Taryl Hoskin, is an African-American male resident of Madison County, Mississippi, residing at 138 Samuel Drive, Madison, Mississippi, 39110.

7. Similarly situated employees and/or persons are defined by the Fair Labor Standards Act, 29 U.S.C. §216, and said potential parties are the employees of the City Of Jackson, Mississippi and/or any other person similarly situated who has sustained damage as a result of the City's breach of the Fair Labor Standards Act.

8. Defendants, City of Jackson, Mississippi, Mayor Tony Yarber, Chief Administrative Officer Gus McCoy, Director Personnel Management Denise McKay and the City Of Jackson as an entity may be served be served with process by serving Tony Yarber, Mayor of the city of Jackson, Mississippi, at 219 South President Street, Jackson, Mississippi, 39201.

FACTS

9. At all times relevant hereto Plaintiffs and other similarly situated persons were employed and or continued to be employed by Defendants within the last three years as defined by the Fair Labor Standards Act, 29 U.S.C. §216.

10. At all times relevant hereto a contract of employment existed between Defendants and Plaintiffs.

11. At all times relevant hereto a contract of employment existed between Defendants and employees similarly situated as Plaintiffs.

12. Plaintiffs and other similarly situated employees have worked hours in excess of forty (40) hours per work week as defined by the Fair Labor Standards Act. Said excess hours are accrued overtime hours as defined by the Fair Labor Standards Act and remain presently due to Plaintiffs and similarly situated employees.

13. Defendants have adopted a specific compensatory time policy that violates the Fair Labor Standards Act. Specifically, The Fair Labor Standards Act requires that overtime be paid at a rate not less than one and one-half times the regular rate at which Plaintiffs and similarly situated employees were paid. Defendants

have specifically compensated Plaintiffs and other similarly situated employees for overtime at a rate that is equal to the regular rate at which Plaintiffs and similarly situated employees are paid. This is a specific violation of the Fair Labor Standards Act. Defendants have engaged in this specific pattern and practice of violation for over thirty years.

14. Employees who are engaged in public safety, emergency response, or seasonal activities may not accrue more than 480 hours of compensatory time pursuant Fair Labor Standards Act. Defendants have specifically failed to place a specific limit on the amount of hours worked by public safety, emergency response, or seasonal employees. This is a specific violation of the Fair Labor Standards Act which causes Plaintiffs and similarly situated employees not to be compensated at minimum wage as set by the Fair Labor Standards Act.

15. Pursuant to the Fair Labor And Standards Act Defendants must upon termination of employment pay employees accrued compensatory time off and other accrued compensatory time. Defendants have specifically, continuously and repetitiously failed to compensate Plaintiffs and other similarly situated persons for compensatory time accrued and owed upon termination of employemnt of Plaintiffs and other similarly situated employees.

29. Pursuant to 29 C.F.R. § 553.50 the Department Of Labor requires Defendants to maintain complete and accurate employment records including detailed records of compensatory time earned and/or expended by employees.

16. Defendants have specifically, continuously and repetitiously failed to maintain said records and said failure has caused Plaintiffs and other similarly situated employees to be deprived of overtime compensation and accrued compensation owed upon the termination of employment.

COUNT ONE

VIOLATION OF THE FAIR LABOR STANDARDS ACT

17. Plaintiffs and other similarly situated persons are non-exempt employees subject to the provisions of the Fair Labor Standards Act thereby entitling Plaintiffs to overtime compensation at a rate not less than one and one-half (1 ½) times the regular rate at which they are compensated.

18. Defendants have specifically violated the Fair Labor And Standards Act by failing to compensate Plaintiffs and other similarly situated employees and/or persons for overtime hours worked in excess of forty (40) hours per week at a rate equal to or greater than one and one half (1 ½) times their regular rate of compensation.

19. Defendants have further violated the Fair Labor Standards Act by not compensating Plaintiffs and other similarly situated persons upon termination of employment for any and all compensatory time earned.

20. Defendants have further violated the Fair Labor Standards Act by not maintaining proper and detailed employment records as required by the Act.

COUNT TWO

PUNITIVE DAMAGES

21. Plaintiffs would show that the City Of Jackson, Mississippi has engaged in a willful pattern and practice of intentionally defrauding, and/or withholding compensatory monies owed to Plaintiffs and similarly situated employees. These intentional acts include a pattern and practice of intentionally failing to maintain proper employment records, time keeping records, payroll records, accounting records and employee compensation records. Plaintiffs would further show that the City has been afforded prior notice of these violations of federal law as well as the tortuous and negligent nature of said acts complained of herein. Plaintiffs allege that the City Of Jackson

has intentionally refused to abide by federal law by knowingly engaging in the acts and omissions complained of above.

22. Plaintiffs would alternatively show that the City Of Jackson is guilty of gross negligence in failing to maintain proper employment records, time keeping records, payroll records, accounting records, employee compensation records and by failing to compensate its employees and other persons pursuant to federal law.

23. The intentional and grossly negligent acts complained of herein warrant an award of punitive damages and attorney's fees so as to punish the City Of Jackson and deter the City Of Jackson, Mississippi and other municipalities from engaging in said acts and omissions in the future.

REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request the following relief:

1. Each Plaintiff herein be adjudicated a Party Plaintiff vested with the authority to represent a Conditional Class of similarly situated persons pursuant to the Fair Labor Standards Act;
2. This Complaint be received by this Court as a Complaint which requests that this civil action be certified as a collective action by the Plaintiffs for and in behalf of themselves and employees similarly situated pursuant to the Fair Labor And Standards Act;
3. This civil action be certified as a collective action by the Plaintiffs for and in behalf of themselves and employees similarly situated;
4. The Plaintiffs named herein be certified as a Conditional Class of persons who are victims of a single decision, common policy and plan carried out

by Defendants;

5. This Court order reasonable fact discovery aimed at determining the identity of other potential class members;
6. This Court order that supervised notice of this collective action be given to all potential class members who may be victims of Defendants' violations of the Fair Labor And Standards Act;
7. That the court supervised notice include a written consent form allowing potential class members to "opt in" as a Party Plaintiff of the Conditional Class;
8. This Court permit potential class members to "opt in" this collective action as members of the Conditional Class by signing and returning to Plaintiffs' counsel the written consent form;
9. That Plaintiff's counsel be permitted to join persons to the Conditional Class as Party Plaintiffs by only filing said executed consent forms with this Court.
10. That all Plaintiffs of the Conditional Class and similarly situated employees be awarded actual damages in the form of overtime wages presently owed to them.
11. That all Plaintiffs of the Conditional Class and similarly situated employees be awarded actual damages in the form of accrued wages presently owed to them and/or that are owed to them as a result of separation of employment;
12. That all Plaintiffs of the Conditional Class and similarly situated employees be awarded liquidated damages equal to or greater than their actual damages pursuant to the Fair Labor Standards Act;

13. This Court enter an award of attorney's fees to all Plaintiffs of the Conditional Class and similarly situated employees as required by the Fair Labor And Standards Act;
14. This Court find that punitive damages are in order to effectuate the purposes of the Fair Labor Standards act as set forth in 29 U.S.C. §216;
15. This Court enter an award of punitive damages against Defendants pursuant to the equitable relief provisions and effectuated purpose provisions of the Fair Labor Standards Act as set forth in 29 U.S.C. §216;
16. This Court enter an order providing for any and all legal relief that it may deem appropriate under the other relief provisions of the Fair Labor Standards Act as set forth in 29 U.S.C. §216; and
17. This Court enter an order providing for any and all equitable relief that it may deem appropriate under the other relief provisions of the Fair Labor Standards Act as set forth in 29 U.S.C. §216;

Respectfully Submitted,
CRIS LEWIS, TAYRL HOSKIN &
CHARLES AYERS

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